

REMARKS

Claims 15, 18-22, and 27-36 are pending in the present application. Reexamination of the application and reconsideration of the rejections and objections are respectfully requested in view of the following remarks, which follow the order set forth in the Office Action.

Interview Summary

Applicants thank the Examiner and the primary Examiner for participating in the helpful and productive interview with Applicants' representative on April 6, 2010. Applicants have set forth below the arguments that were favorably discussed in the interview. In particular, Applicants argue that Furch does not disclose each and every limitation of claims 15, 27, and 30 and that Drabb does not provide any disclosure that overcomes the deficiency of Furch. Further, Applicants submit that one of ordinary skill in the art would have no reason to combine Furch and Drabb because of the divergent teachings of the two references. Given the discussions of the interview, Applicants believe that the current claims are allowable.

Rejection under 35 USC §102

Claims 15-17, 19-20, and 23-26 are rejected under 35 USC §102(b) as being anticipated by Furch et al., EP 0604798, ("Furch"). Applicants respectfully traverse. Applicants note that claims 16-17 and 23-26 have been cancelled. Thus, any rejection thereof is now moot.

Claim 15 recites a method for controlling non-crop pests comprising contacting the non-crop pests or food supply, habitat, breeding grounds or their locus with a pesticidally effective amount of a new non-crop pest control agent, i.e., a compound of formula I. The non-crop pests are selected from the group consisting of the orders Isoptera, Blattaria (Blattodea), Hymenoptera, Siphonaptera, and Parasitiformes.

In contrast, Furch relates to plant protection in the agricultural field and discloses the insecticidal and acaricidal activity of N-arylhydrazine derivatives and other compounds against crop pests of the Coleoptera, Lepidoptera, and Acarina orders. Notably, these orders are not included in the listing of non-crop pests in amended claim 15. The Office Action states "the reference does not have to disclose examples of every embodiment in order for that embodiment to be encompassed by the reference." OA, p. 3. However, Furch fails to disclose any of the orders listed in amended claim 15. As such, Furch does not disclose each

and every limitation of claim 15 and thus does not anticipate claim 15.

Further, Applicants submit that Furch is directed to a method for controlling crop pests rather than to a method for controlling non-crop pests, as recited in claim 15. Furch states "[g]rowing or harvested crops may be protected from attack or infestation by insect or acarid pests by applying to the foliage of the crops, or to the soil or water in which they are growing, a pesticidally effective amount of a formula I N-arylhydrazine derivative. In practice ... the formula I compound ..., when applied to the plants or the soil or water in which they are growing, is effective to protect the plants from insect or acarina attack and infestation." P. 7, ll. 32-37. Further, "[a]ll compositions which lend themselves to soil, water, and foliage application and provide effective plant protection are suitable." P. 7, ll. 49-51.

As discussed in detail at pages 4 and 5 of the instant specification, activity of a compound against pests for plant protection in the agricultural field, i.e., against crop pests, does not generally suggest activity of the same compound against non-crop pests. Crop pest control is always a part of plant protection. In contrast, non-crop pest control relates to, for example, protection of non-living organic materials and public health. The properties of pesticides must be suitable for their specific use. Thus, systemic pesticides that are introduced into plant parts are suitable for controlling piercing-sucking or biting crop pests. However, these same pesticides cannot generally be expected to show equal activity against non-crop pests who do not feed on plant parts. Based on the foregoing, Applicants assert that there is no disclosure in Furch of controlling non-crop pests, much less the particular non-crop pests recited in claim 15. Based on the foregoing, Applicants submit that claim 15 is not anticipated by or rendered obvious by Furch. As such, Applicants respectfully request reconsideration and withdrawal of the instant rejection.

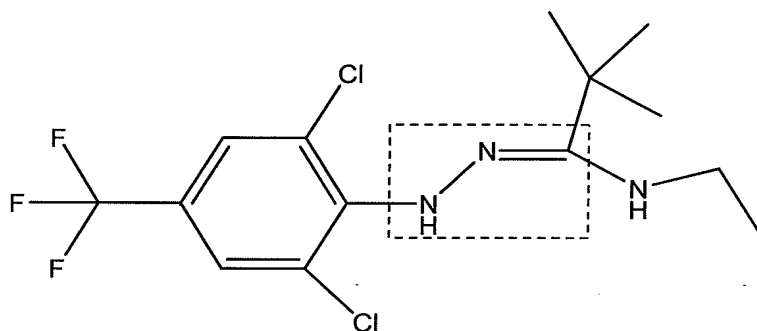
Rejection under 35 USC §103

Claims 18, 21-22, and 27-36 are rejected under 35 USC §103(a) as being allegedly unpatentable over Furch in view of Drabb, Jr., U.S. Patent No. 4,152,436, ("Drabb"). Applicants respectfully traverse.

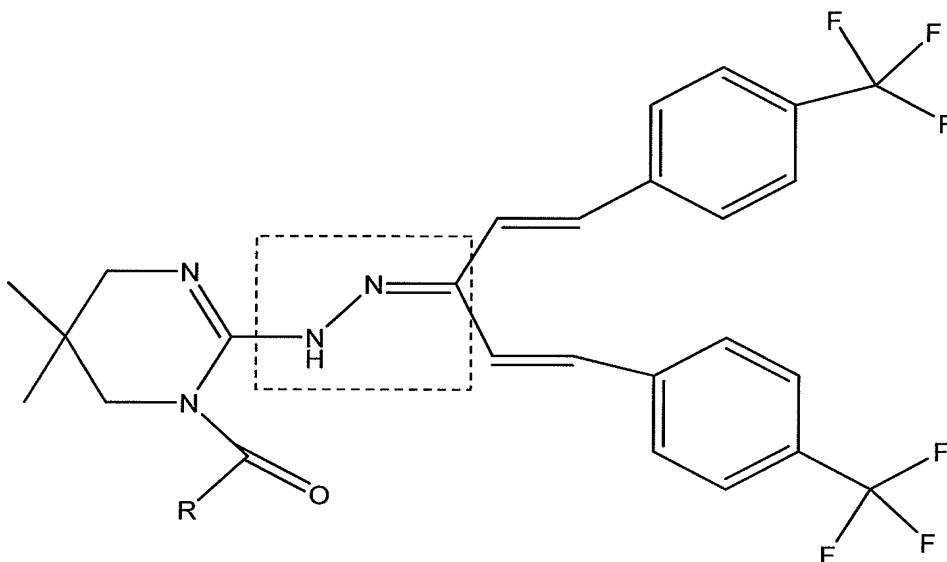
Drabb discloses the use of acylated pentadienone hydrazones to control insects and ants, and Furch discloses a method of plant protection against crop pests using a broad range of N-arylhydrazine derivatives of the general Formula I. The hydrazones disclosed in Drabb are structurally significantly different from the N-arylhydrazine derivatives disclosed in

Furch and the amidrazones described in the instant application. Examples of representative structures are shown below.

Furch representative structure:



Drabb representative structure:



While the two compounds share the common element shown in the boxed-in areas above, this is the only similarity in structure between the compounds.

The Office Action states “one would be motivated to make the baits of Drabb, Jr. with

the compounds of Furch et al.” OA, p. 4. Applicants respectfully disagree. As shown above, the compounds are structurally very different. As such, the compounds of Drabb and Furch behave chemically very differently. For example, the compounds of Drabb and Furch have a completely different mode of action with regard to controlling pests. Given the complete divergence in chemical structure and mode of action between the compounds of Drabb and Furch, one of ordinary skill in the art would have no reason to believe that the compound of Drabb could simply be replaced with the structurally distinct compound of Furch in the baits of Drabb. Further, the ordinary artisan would have no expectation of success of providing a method for protection of non-living organic materials against non-crop pests by replacing the compound of Drabb with the compound of Furch in the baits of Drabb. Based on the foregoing, Applicants submit that claims 18, 21-22, and 27-36 are not obvious over Furch in combination with Drabb.

With further regard to claims 27-29 and claims 30-33, claims 27 and 30 specify the non-crop pests against which non-living organic materials are being protected as selected from the group consisting of the class Diplopoda and of the orders Isoptera, Blattaria (Blattodea), Dermaptera, Hemiptera, Hymenoptera, Orthoptera, and Thysanura. Given the recitation of claims 27 and 30, Applicants submit that even assuming, *arguendo*, that one of ordinary skill in the art replaced the acylated pentadienone hydrazones of Drabb with the N-arylhydrazine derivatives of Furch in the methods of Drabb, the method of claims 27-29 and 30-33 would still not be obvious in view of the resulting method. As discussed in detail above, Furch fails to disclose that the compounds recited therein have any insecticidal activity for any of the class or orders recited in amended claims 27 or 30 (i.e., Furch fails to disclose the use of the compounds thereof for protection against any of the recited non-crop pests). As such, one of ordinary skill in the art would have no reason to believe that the Furch compounds would have any insecticidal activity against the recited class and/or orders if used in the methods of Drabb. Accordingly, Applicants again submit that amended claims 27-29 and 30-33 are not obvious in view of the combination of Furch and Drabb. Based on the foregoing, Applicants respectfully request reconsideration and withdrawal of the instant rejection.

For the foregoing reasons, claims 15, 18-22, and 27-36 are considered to be allowable. A Notice to this effect is respectfully requested. If any questions remain, the Examiner is invited to contact the undersigned at the number given below.

The Director is hereby authorized to charge any appropriate fees that may be required by this paper, and to credit any overpayment, to Deposit Account No. 23-1925.

Respectfully submitted,

BRINKS HOFER GILSON & LIONE

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